

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLEE**



74-1187

To be submitted by  
BURTON HERMAN

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

-----X  
OJI KWESE SEKOU a/k/a CHRIS REED,  
JA JA NKOMO KALOMO a/k/a MICHAEL  
PHILLIPS,

Plaintiff-Appellant,

-against-

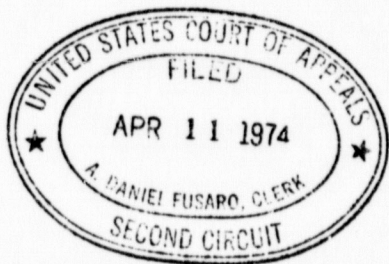
ROBERT J. HENDERSON, Superintendent  
of the Auburn Correctional Facility,  
Officer I-10,

Defendant-Appellee.

On Appeal from the United States  
District Court for the Northern  
District of New York.

Docket No. 74-1187

-----X  
BRIEF FOR DEFENDANT-APPELLEE



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TABLE OF CONTENTS

	<u>PAGE</u>
Statement.....	1
Question Presented.....	2
Prior Proceedings.....	2
ARGUMENT -      LAWFUL INCARCERATION BRINGS ABOUT THE LOSS OF AN INDIVIDUAL'S RIGHT TO GROW A BEARD OR GOATEE.....	3
Conclusion.....	4
Appendix.....	



# TABLE OF CASES

	<u>PAGE</u>
<u>Blake v. Pryse</u> , 444 F. 2d 218 (8th Cir. 1971).....	2
<u>Brown, Jr. v. Wainwright</u> , 419 F. 2d 1376 (5th Cir. 1970).....	3
<u>Dwen v. Barry</u> , 483 F. 2d 1126, 1130 (2d Cir. 1973).....	3
<u>Price v. Johnson</u> , 334 U.S. 266, 285 (1948).....	3
<u>Rinehart v. Brewer</u> , 360 F. Supp. 105, 112-113 (S.D. Iowa, 1973).....	3
<u>Sostre v. McGinnis</u> , 334 F. 2d 906, 908 (2d Cir. 1964).....	3
<u>Sostre v. McGinnis</u> , 442 F. 2d 178, 188-189 (2d Cir. 1971).....	3
<u>Williams v. Batton</u> , 342 F. Supp. 1110 (E.D.N.C. 1972).....	2

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Plaintiff-Appellant, :

-against- : Docket No. 74-1187

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Officer I-10, :

Defendant-Appellee. :

On Appeal from the United States :  
District Court for the Northern :  
District of New York. :

-----X

BRIEF FOR DEFENDANT-APPELLEE

Statement

This is an appeal from an order dated December  
4, 1973 of the United States District Court for the  
Northern District of New York (Port, J.) dismissing a  
civil rights complaint.

### Question Presented

Does lawful incarceration bring about the loss of an individual's right to grow a beard or goatee?

### Prior Proceedings

Plaintiffs, inmates at Auburn Correctional Facility, sought an injunction against enforcement of institutional rules prohibiting beards and goatees, a declaration that the rules are unconstitutional, and exemplary damages.

In dismissing the complaint, the District Court stated:

"The claim presented does not, in my opinion present a federal or constitutional question justifying federal interference in the operation of the State prison. See Blake v. Pryse, 444 F. 2d 218 (8th Cir., 1971), and Williams v. Batton 342 F. Supp. 1110 (E.D.N.C. 1972). Further, Chief Judge James T. Foley of this District Court has recently reached the same decision in a case questioning a prison regulation requiring an inmate to shave and cut his hair. Barnes v. Preiser, et al., 73-CV-(N.D.N.Y. Nov. 29, 1973)".



Appellants have filed a pro se brief with this Court.

ARGUMENT

LAWFUL INCARCERATION BRINGS ABOUT  
THE LOSS OF AN INDIVIDUAL'S RIGHT  
TO GROW A BEARD OR GOATEE.

An individual has a right to style his own appearance. See Dwen v. Barry, 483 F. 2d 1126, 1130 (2d Cir. 1973). However, after he has been lawfully deprived of his liberty he loses this right. See Sostre v. McGinnis, 334 F. 2d 906, 908 (2d Cir. 1964); Price v. Johnson, 334 U.S. 266, 285 (1948) ("lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system"). See also Brown Jr. v. Wainwright, 419 F. 2d 1376 (5th Cir. 1970); Sostre v. McGinnis, 442 F. 2d 178, 188-189 (2d Cir. 1971).

Regulations governing hair length in prisons are dictated by considerations of hygiene and identification of prisoners, Brown, Jr. v. Wainwright, supra; Williams v. Batton, supra; Rinehart v. Brewer, 360 F. Supp. 105, 112-113 (S.D. Iowa, 1973) and the rule at Auburn Correctional Facility

requiring inmates to be clean shaven and their hair to be clean and neatly trimmed is necessitated by these reasons. See affidavit of Ernest Montanye, Assistant Deputy Commissioner of the Department of Correctional Services in the appendix.

CONCLUSION

THE ORDER SHOULD BE AFFIRMED.

Dated: New York, New York  
April 10, 1974

Respectfully submitted,

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for Defendant-  
Appellee

SAMUEL A. HIRSHOWITZ  
First Assistant Attorney General

BURTON HERMAN  
Assistant Attorney General  
of Counsel



APPENDIX

STATE OF NEW YORK    ) ss:  
COUNTY OF ALBANY    )

Ernest Montanye, being duly sworn deposes and says:

I am an Assistant Deputy Commissioner with the Department of Correctional Services and in my duties among other things, I am charged with monitoring the functioning of the inmate rules at various facilities.

The Residents Handbook at the Auburn Correctional Facility has a rule requiring inmates to be neat and clean shaven and to have their hair at a moderate length. The rule follows:

"Residents will be clean shaven at all times. Hair will be clean and neatly trimmed. Sideburns will be cut to the bottom of the ears.

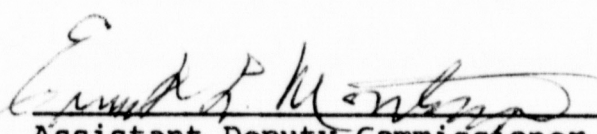
Mustaches are to be grown only to the lip line."

The rules limiting the amount of hair covering the face and limiting the length of hair on the top and side of one's head are based on the factors of cleanliness and security.

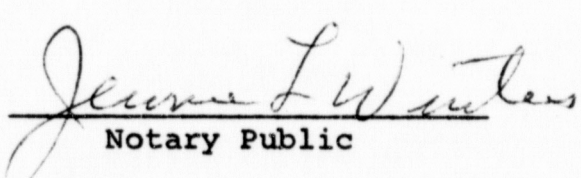
In the institutional setting the need for cleanliness is obvious and in an effort to assist in bringing about an overall degree of cleanliness, limited facial hair and moderate haircuts are a necessity.

A more compelling reason for providing for limited amount of hair is for the purpose of identification. To provide

a continuity of identification of inmates, one must require a continuity in the appearance of an inmate. To allow an inmate to let his hair grow long and then have it cut short would greatly interfere with the ability to provide positive identification of inmates.

  
Assistant Deputy Commissioner

Sworn to before me this  
29<sup>th</sup> day of March 1974

  
Notary Public

Jerome L. Winters  
NOTARY PUBLIC, State of New York  
No. 4311350  
Qualified in Albany County  
Commission Expires March 30, 1975



STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK )

MARY KO , being duly sworn, deposes and  
says that she is employed in the office of the Attorney  
General of the State of New York, attorney for /  
herein. On the <sup>11<sup>th</sup></sup> ~~10<sup>th</sup>~~ day of April , 1974 , she served  
the annexed upon the following named persons :

OJI KWESE SEKOU a/k/a  
CHRIS REED  
No. 64410  
135 State Street  
Auburn, New York 13021

JA JA NKOMO KALOMO a/k/a  
MICHAEL PHILLIPS  
No. 64409  
135 State Street  
Auburn, New York 13021

Plaintiffs-Appellants  
~~Attorney~~ in the within entitled action by depositing  
a true and correct copy thereof, properly enclosed in a post-  
paid wrapper, in a post-office box regularly maintained by the  
Government of the United States at Two World Trade Center,  
New York, New York 10047, directed to said ~~Attorney~~ <sup>Plaintiffs-Appellants</sup> at the  
addresses within the State designated by them for that  
purpose.

Mary Ko

11<sup>th</sup> Sworn to before me this  
~~10<sup>th</sup>~~ day of April , 1974

Burton Herman  
Assistant Attorney General  
of the State of New York